IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 65/2002 AND C.A. NO.328/2002.

Shri Shirish Pandurang
Diukar, major, married,
residing at Angodwada,
Mapusa, Bardez, Goa. ... Appellant.

VERSUS

Jawahar H. Champsi,
major, married,
residing at H.No.47,
Rua de Ormuz, Opp.
Azad Maidan, Panaji,
Goa. ... Respondent.

Shri Sudin M. Usgaonkar, Advocate for the Appellant.

Shri S.D. Lotlikar, Senior Advocate with Shri A.D. Bhobe, Advocate for the Respondent.

CORAM: P. V. KAKADE, J.

DATE: 5TH DECEMBER, 2002.

J U D G M E N T:

Rule. Rule made returnable forthwith by consent of the parties.

2. This second appeal is preferred by the appellant against the Judgment and Order passed by the learned District Judge, Panaji in Regular Civil Appeal No.127/2000 dismissing the appeal and confirming the decree passed by the learned Civil Judge S.D., Panaji in favour of the plaintiff/respondent in Special Civil Suit No. 26/1997/B.

3. The facts involved in the dispute in short are thus :-

The plaintiff/respondent is the owner of the building bearing house No.47 situated at Rua de Ormuz, Panaji consisting of one ground floor and one upper floor. On the ground floor of the said building there are four shops. Shop No.2 has been leased out on monthly rent of Rs.70/- to one Kamruddin Karmali, since deceased, by deed of lease dated 28.1.1969. The said Karmali died intestate on 30th September, 1996. Prior to his death the said shop had remained closed for over a month. As the said Karmali had no heirs, the plaintiff as the owner of the suit shop took possession of the suit shop and put his locks thereon. On 20.1.1997 the plaintiff found that the defendant had broken the locks of the shop and had entered it. On questioning the defendant, he stated that the suit shop had been bequeathed to him by the deceased by his Will dated 19.9.1996. According to the plaintiff the said Karmali had no heirs and, as such his tenancy to the suit shop had come to an end with his death and the said premises stood reverted to the plaintiff. It was further the case of the plaintiff that by bequeathing of the suit shop, the said deceased Karmali had transferred the suit shop in clear breach of the agreement. In short, according to the

plaintiff, the defendant had no right, title or interest in the suit shop and that he was a rank trespasser therein.

The appellant/defendant contested the suit, wherein he admitted that the lease deed dated 28.1.1969 the plaintiff had leased the suit shop to Karmali for commercial purpose. He has also admitted that the suit shop was closed prior to the death of Karmali. The defendant however denied that the plaintiff took possession of the suit shop and put his own lock. According to the defendant, he was in possession of the suit shop. The defendant also denied that the said Karmali had no heirs and that his tenancy rights to the suit shop had come to an end with his death.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the appellant/defendant had no right to the suit shop by virtue of Will dated 19.9.1996 by Karmali and bequeathing of the suit premises by the deceased Karmali to the appellant was in breach of the lease agreement. As such the suit came to be decreed in favour of the respondent/plaintiff.

5. Being aggrieved, the appellant preferred

an appeal before the District Judge, North Goa, who adjudicated the appeal on merits and concurred with the finding recorded by the learned Trial Judge and came to the conclusion that the appeal deserved to be dismissed. Hence this second appeal.

6. I have heard Shri Sudin Usgaonkar, the learned counsel for the appellant and Shri S.D. Lotlikar, the learned senior counsel for the respondent. I have also perused the entire record with their help.

7. Shri Usgaonkar, the learned counsel for the appellant submitted that there were substantial questions of law involved in this appeal to the effect that the question of right of the appellant qua the suit premises by virtue of the Will was required to be determined. It was also submitted that both the lower courts failed to realise the basic distinction between the law prevailing in the State of Goa and rest of India in the matter of succession wherein the chief object of a Will is the appointment of heirs, whereas in rest of India the purpose is to distribute the property and therefore the appellant had inherited tenancy rights and could not be termed as a transfer.

8. Shri Lotlikar, the learned senior counsel

brought to my notice the well established legal principle pronounced by the various rulings of the Supreme Court with regard to the tenancy rights prevailing all over India. He put reliance on the ruling of the Supreme Court in the case of **Jaspal Singh v. The Additional District Judge, Bulandshahr and others** (A.I.R. 1984 S.C., 1880) as well as the ruling in the case of **Bhavarlal v. Kanaiyalal** (A.I.R. 1986 S.C., 600). On perusal of the ratio laid down by the Supreme Court in the rulings, I have no doubt that the deceased Kamruddin Karmali had no right to transfer the suit shop to the defendant by virtue of the said Will dated 19.9.1996.

9. In the case of **Bhavarlal v. Kanaiyalal** (supra), the Supreme Court dealing with the provisions of Section 5(11)(c)(ii) and section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act of 1947, have observed that a person occupying a non-residential premises as a tenant after the contractual period is over cannot bequeath his right to occupy the property as a tenant under a Will in favour of a legatee who is not a member of his family carrying on business, trade or storage with him in the said premises at the time of his death u/s 5(11)(c)(ii) of the Act. It was held that there was no justification to saddle the landlord with the

liability to treat a stranger who is not referred to in sub-clause (ii) of Section 5(11)(c) of the Act as a tenant on the basis of a bequest made under a Will by the tenant.

10. Similarly in the case of **Jaspal Singh** (supra), the Supreme Court has observed that in the case of non-residential building when the tenant is carrying on business in the said building admits a person who is not a member of his family as partner or a new partner as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sub-lets the premises he is liable to be ejected. Obviously therefore there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer the tenancy rights.

11. No doubt, in the matter of succession, the legal position prevailing in the State of Goa and the rest of India is different in the sense that the chief object of "Will" is reappointment of an heir in Goa, whereas in other parts of the country, it is to distribute the property. Further, that does not mean

that such analogy would be applicable to the tenancy laws or it would override the law of the land relating to tenancy because the Rent Control Act and Rules thereunder applicable to Goa also are analogous to those provisions prevailing in the rest of the country. Therefore there is no doubt whatsoever that the deceased Karmali had no right to bequeath his tenancy rights in respect of the suit shop to the defendant, who was a stranger which is a well established legal position declared by the Apex Court.

12. In this regard I must make a note of the Supreme Court dicta in the case of **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others (1999)** 3 S.C.C., 722, wherein it is observed that in the case of concurrent findings by both the courts below, it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last court of fact, being the first appellate court. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or it is settled position on the basis of pronouncements made by the Apex Court. In the present case before us the pronouncements made before the Apex Court time and

again are clear enough which would definitely indicate that there is no substantial question of law involved in the present appeal and, as such, it deserves to be dismissed.

13. In the result the appeal stands dismissed with no order as to costs.

14. The Civil Application also stands dismissed.

P. V. KAKADE, J.

sl.